#### Pt. 170

# PART 170—INDIAN RESERVATION ROADS PROGRAM

# Subpart A—Policies, Applicability, and Definitions

Sec.

170.1 What does this part do?

170.2 What is the IRR Program and BIA Road Maintenance Program policy?

170.3 When do other requirements apply to the IRR Program?

170.4 What is the effect of this part on existing tribal rights?

170.5 What definitions apply to this part? 170.6 Information collection.

#### Subpart B—Indian Reservation Roads Program Policy and Eligibility

### CONSULTATION, COLLABORATION, COORDINATION

170.100 What do the terms "consultation, collaboration, and coordination" mean?

170.101 What is the IRR Program consultation and coordination policy?

170.102 How do the Departments consult, collaborate, and coordinate with tribal governments?

170.103 What goals and principles guide the Secretaries?

170.104 Must the Secretary consult with tribal governments before obligating IRR Program funds?

170.105 Are funds available for consultation, collaboration, and coordination activities?

170.106 When must State governments consult with tribes?

170.107 Should planning organizations and local governments consult with tribes when planning for transportation projects?

170.108 Should Indian tribes and BIA consult with States' planning organizations and local governments in the development of their IRRTIP?

170.109 How do the Secretaries prevent discrimination or adverse impacts?

170.110 How can State and local governments prevent discrimination or adverse impacts?

170.111 What can a tribe do if discrimination or adverse impacts occur?

#### ELIGIBLE USES OF IRR PROGRAM FUNDS

170.115 What activities may be funded with IRR Program funds?

170.116 What activities are not eligible for IRR Program funding?

170.117 How can a tribe determine whether a new use of funds is allowable?

#### 25 CFR Ch. I (4-1-06 Edition)

USE OF IRR AND CULTURAL ACCESS ROADS 170.120 What restrictions apply to the use of an Indian Reservation Road?

170.121 What is a cultural access road?

170.122 Can a tribe close a cultural access road?

#### SEASONAL TRANSPORTATION ROUTES

170.123 What are seasonal transportation routes?

170.124 Does the IRR Program cover seasonal transportation routes?

#### IRR HOUSING ACCESS ROADS

170.127 What terms apply to access roads?

170.128 Are housing access roads and housing streets eligible for IRR Program funding?

#### TOLL, FERRY AND AIRPORT FACILITIES

170.130 How can tribes use Federal highway funds for toll and ferry facilities?

170.131 How can a tribe find out more about designing and operating a toll facility?

170.132 When can a tribe use IRR Program funds for airport facilities?

#### RECREATION, TOURISM AND TRAILS

170.135 Can a tribe use Federal funds for its recreation, tourism, and trails program?

170.136 How can a tribe obtain funds?

170.137 What types of activities can a recreation, tourism, and trails program include?

170.138 Can roads be built in roadless and wild areas?

#### HIGHWAY SAFETY FUNCTIONS

170.141 What Federal funds are available for a tribe's highway safety activities?

170.142 How can tribes obtain funds to perform highway safety projects?

170.143 How can IRR Program funds be used for highway safety?

170.144 What are eligible highway safety projects?

170.145 Are other funds available for a tribe's highway safety efforts?

#### TRANSIT FACILITIES

170.148 What is a tribal transit program?

170.149 How do tribes identify transit needs?

170.150 What Federal funds are available for a tribe's transit program?

170.151 May a tribe or BIA use IRR Program funds as matching funds?

170.152 What transit facilities and activities are eligible for IRR Program funding?

#### IRR PROGRAM COORDINATING COMMITTEE

170.155 What is the IRR Program Coordinating Committee?

170.156 What are the IRR Program Coordinating Committee's responsibilities?

#### Bureau of Indian Affairs, Interior

- 170.157 What is the IRR Program Coordinating Committee's role in the funding process?
- 170.158 How does the IRR Program Coordinating Committee conduct business?

#### INDIAN LOCAL TECHNICAL ASSISTANCE PROGRAM

- 170.161 What is the Indian Local Technical Assistance Program?
- 170.162 How is the Indian LTAP funded?
- 170.163 How are Indian LTAP recipients selected?
- 170.164 How are tribal representatives nominated and chosen for the selection committee?
- 170.165 May a tribe enter into a contract or agreement for Indian LTAP funds?
- $170.1\overline{66}$  What services do Indian LTAP centers provide?
- 170.167 How does a tribe obtain services from an Indian LTAP center?
- 170.168 Do Indian LTAP centers offer services similar to those of State LTAPs?
- 170.169 What can a tribe do if Indian LTAP services are unsatisfactory?
- 170.170 How are Indian LTAP centers managed?
- 170.171 How are tribal advisory technical panel members selected?

# INDIAN LTAP-SPONSORED EDUCATION AND TRAINING OPPORTUNITIES

- 170.175 What Indian LTAP-sponsored transportation training and educational opportunities exist?
- 170.176 Where can tribes get scholarships and tuition for Indian LTAP-sponsored education and training?
- APPENDIX A TO SUBPART B—ALLOWABLE USES OF IRR PROGRAM FUNDS
- APPENDIX B TO SUBPART B—SOURCES OF TRIB-AL TRANSPORTATION TRAINING AND EDU-CATION OPPORTUNITIES

#### Subpart C—Indian Reservation Roads Program Funding

# $\begin{array}{c} {\rm TRIBAL\ TRANSPORTATION\ ALLOCATION} \\ {\rm METHODOLOGY\ (TTAM)} \end{array}$

- 170.200 How does BIA allocate IRR Program funds?
- 170.201 How does BIA allocate and distribute tribal transportation planning funds?
- 170.202 Does the Relative Need Distribution Factor allocate funding among tribes?

#### IRR HIGH PRIORITY PROJECT (IRRHPP)

- 170.205 What is an IRR High Priority Project (IRRHPP)?
- 170.206 How is an emergency/disaster defined?
- 170.207 What is the intent of IRRHPP emergency/disaster funding?

- 170.208 What funding is available for IRRHPP?
- 170.209 How will IRRHPP applications be ranked and funded?
- 170.210 How may a tribe apply for IRRHPP? 170.211 What is the IRRHPP Funding Priority List?
- 170.212 What is the timeline for IRRHPPs?
- 170.213 How long are IRRHPP funds available for a project?
- 170.214 How does award of an emergency/disaster project affect projects on the FPL?

#### POPULATION ADJUSTMENT FACTOR

- 170.220 What is the Population Adjustment Factor?
- 170.221 What funding is available for distribution using the PAF?

#### RELATIVE NEED DISTRIBUTION FACTOR

170.223 What is the Relative Need Distribution Factor (RNDF)?

### IRR INVENTORY AND LONG-RANGE TRANSPORTATION PLANNING (LRTP)

- 170.225 How does the LRTP process relate to the IRR Inventory?
- 170.226 How will this part affect the IRR Inventory?
- 170.227 How does BIA develop and use the IRR Inventory?
- 170.228 Are all facilities included in the IRR Inventory used to calculate CTC?

#### GENERAL DATA APPEALS

- 170.231 May a tribe challenge the data BIA uses in the RNDF?
- 170.232 How does a tribe appeal a disapproval from the BIA Regional Director?

#### FLEXIBLE FINANCING

- 170.300 May tribes use flexible financing to finance IRR transportation projects?
- 170.301 Can a tribe use IRR Program funds to leverage other funds or pay back loans?
- 170.302 Can BIA regional offices borrow IRR Program funds from each other?
- 170.303 Can a tribe apply for loans or credit from a State infrastructure bank?
- APPENDIX A TO SUBPART C—IRR HIGH PRIORITY PROJECT SCORING MATRIX
- APPENDIX B TO SUBPART C—POPULATION ADJUSTMENT FACTOR
- APPENDIX C TO SUBPART C—RELATIVE NEED DISTRIBUTION FACTOR

#### Pt. 170

APPENDIX D TO SUBPART C—COST TO CONSTRUCT

#### Subpart D—Planning, Design, and Construction of Indian Reservation Roads Program Facilities

#### TRANSPORTATION PLANNING

170.400 What is the purpose of transportation planning?

170.401 What is BIA's role in transportation planning?

170.402 What is the tribal role in transportation planning?

170.403 What IRR Program funds can be used for transportation planning?

170.404 What happens when a tribe uses its IRR Program construction funds for transportation planning?

170.405 Can tribal transportation planning funds be used for road construction and other projects?

170.406 How must tribes use planning funds? 170.407 What happens to unobligated planning funds?

#### LONG-RANGE TRANSPORTATION PLANNING

170.410 What is the purpose of tribal long-range transportation planning?

170.411 What can a long-range transportation plan include?

170.412 How is the tribal IRR long-range transportation plan developed and approved?

170.413 What is the public role in developing the long-range transportation plan?

170.414 How is the tribal long-range transportation plan used and updated?

170.415 What is pre-project planning?

#### TRANSPORTATION IMPROVEMENT PROGRAM

170.420 What is the tribal priority list?

170.421 What is the Tribal Transportation Improvement Program (TTIP)?

170.422 What is the IRR Transportation Improvement Program (IRRTIP)?

 $170.\overline{4}23$  How are projects placed on the IRRTIP?

170.424 How does the public participate in developing the IRRTIP?

170.425 How does BIA update the IRRTIP?

170.426 What is the approval process for the IRRTIP?

170.427 How may an IRRTIP be amended?

170.428 How is the State Transportation Improvement Program related to the IRRTIP?

#### PUBLIC HEARINGS

170.435 How does BIA or the tribe determine the need for a public hearing?

170.436 How are public hearings for IRR planning and projects funded?

170.437 How must BIA or a tribe inform the public when no hearing is held?

170.438 How must BIA or a tribe inform the public when a hearing is held?

170.439 How is a public hearing conducted?

170.440 How can the public learn the results of a public hearing?

170.441 Can a decision resulting from a hearing be appealed?

#### IRR INVENTORY

170.442 What is the IRR Inventory?

170.443 How can a tribe list a proposed transportation facility in the IRR Inventory?

170.444 How is the IRR Inventory updated? 170.445 What is a strip map?

### ENVIRONMENTAL AND ARCHEOLOGICAL REQUIREMENTS

170.450 What archeological and environmental requirements must the IRR Program meet?

170.451 Can IRR Program funds be used for archeological and environmental compliance?

#### DESIGN

170.454 What design standards are used in the IRR Program?

170.455 How are design standards used in IRR projects?

170.456 When can a tribe request an exception from the design standards?

170.457 Can a tribe appeal a denial?

# REVIEW AND APPROVAL OF PLANS, SPECIFICATIONS, AND ESTIMATES

170.460 What must a project package include?

170.461 May a tribe approve plans, specifications, and estimates?

170.462 When may a self-determination contract or self-governance agreement include PS&E review and approval?

170.463 What should the Secretary do if a design deficiency is identified?

### CONSTRUCTION AND CONSTRUCTION MONITORING

 $170.470~\mathrm{What}$  are the IRR construction standards ?

170.471 How are projects administered?

170.472 What construction records must tribes and BIA keep?

 $170.473\,$  What happens when a construction project ends?

170.474 Who conducts the project closeout?

# PROGRAM REVIEWS AND MANAGEMENT SYSTEMS

170.500 What program reviews do the Secretaries conduct?

170.501 What happens when the review process identifies areas for improvement?

170.502 Are management systems required for the IRR Program?

170.503 How are IRR Program management systems funded?

#### BRIDGE INSPECTION

- 170.504 When and how are bridge inspections performed?
- 170.505 How must bridge inspections be coordinated?
- 170.506 What are the minimum qualifications for certified bridge inspectors?
- 170.507 Who reviews bridge inspection reports?
- APPENDIX A TO SUBPART D—CULTURAL RESOURCE AND ENVIRONMENTAL REQUIREMENTS FOR THE IRR PROGRAM
- APPENDIX B TO SUBPART D—DESIGN STAND-ARDS FOR THE IRR PROGRAM

#### Subpart E—Service Delivery for Indian Reservation Roads

#### FUNDING PROCESS

- 170.600 What must BIA include in the notice of availability of funds?
- 170.601 What happens to the unused portion of IRR Program management and oversight funds reserved by the Secretary?
- 170.602 If a tribe incurs unforeseen construction costs, can it get additional funds?

#### MISCELLANEOUS PROVISIONS

- 170.605 When may BIA use force account methods in the IRR Program?

  170.606 How do legislation and procurement.
- requirements affect the IRR Program?

  170.607 Can a tribe use its allocation of IRR
- 170.607 Can a tribe use its allocation of IRR Program funds for contract support costs?
- 170.608 Can a tribe pay contract support costs from Department of the Interior or BIA appropriations?
- CONTRACTS AND AGREEMENTS UNDER ISDEAA
- 170.610 What IRR Program functions may a tribe assume under ISDEAA?
- 170.611 What special provisions apply to ISDEAA contracts and agreements?
- 170.612 How are non-contractible functions funded?
- 170.613 When does BIA determine the amount of funds needed for non-contractible non-project related functions?
- 170.614 Can a tribe receive funds before BIA publishes the notice of funding availability?
- 170.615 Can a tribe receive advance payments for non-construction activities?
- 170.616 How are advance payments made when additional IRR Program funds are made available after execution of the self-governance agreement?
- 170.617 May a tribe include a contingency in its proposal budget?
- 170.618 Can a tribe keep savings resulting from project administration?

- 170.619 Do tribal preference and Indian preference apply to IRR Program funding?
- 170.620 How do ISDEAA's Indian preference provisions apply?
- 170.621 What if a tribe fails to substantially perform work under a contract or agreement?
- 170.622 What IRR programs, functions, services, and activities are subject to the self-governance construction regulations?
- 170.623 How are IRR Program projects and activities included in a self-governance agreement?
- 170.624 Is technical assistance available?
- 170.625 What regulations apply to waivers?
- 170.626 How does a tribe request a waiver of a Department of Transportation regulation?
- APPENDIX A TO SUBPART E—IRR PROGRAM FUNCTIONS THAT ARE NOT OTHERWISE CONTRACTIBLE

### Subpart F—Program Oversight and Accountability

- 170.700 What is the IRR Program stewardship plan?
- 170.701 May a direct service tribe and BIA Region sign a Memorandum of Understanding?
- 170.702 What activities may the Secretary review and monitor?

#### Subpart G—BIA Road Maintenance

- 170.800 Who owns IRR transportation facilities?
- 170.801 What is the BIA Road Maintenance Program?
- 170.802 How is road maintenance funded?
- 170.803 What facilities are eligible under the BIA Road Maintenance Program?
- 170.804 How is BIA's Road Maintenance Program related to the IRR Program?
- 170.805 What are the local, tribal, and BIA roles in transportation facility maintenance?
- 170.806 What is an IRR Transportation Facilities Maintenance Management System (IRR TFMMS)?
- 170.807 What must BIA include when it develops an IRR Transportation Facilities Maintenance Management System?
- 170.808 Can BIA Road Maintenance Program funds be used to improve IRR transportation facilities?
- 170.809 Can a tribe perform road maintenance under a self-determination contract or self-governance agreement?
- 170.810 To what standards must an IRR transportation facility be maintained?
- 170.811 What happens if lack of funds results in inadequate maintenance?
- 170.812 What is emergency maintenance?
- 170.813 When can access to IRR transportation facilities be restricted?

#### § 170.1

APPENDIX A TO SUBPART G—LIST OF ACTIVITIES ELIGIBLE FOR FUNDING UNDER BIA TRANSPORTATION FACILITY MAINTENANCE PROGRAM

#### **Subpart H—Miscellaneous Provisions**

## HAZARDOUS AND NUCLEAR WASTE TRANSPORTATION

- 170.900 What is the purpose of the provisions relating to transportation of hazardous and nuclear waste?
- 170.901 What standards govern transportation of radioactive and hazardous materials?
- 170.902 What is the role of State, tribal, and local governments?
- 170.903 Who notifies tribes of the transport of radioactive waste?
- 170.904 Who responds to an accident involving a radioactive or hazardous materials shipment?
- 170.905 How can tribes obtain training in handling hazardous material?
- 170.906 Who cleans up radioactive and hazardous material spills?

### REPORTING REQUIREMENTS AND INDIAN PREFERENCE

- 170.910 What information on the IRR Program or projects must BIA provide to tribes?
- 170.911 Are Indians entitled to employment and training preferences?
- 170.912 Does Indian employment preference apply to Federal-aid Highway Projects?
- 170.913 Do tribal-specific employment rights and contract preference laws apply?
- 170.914 What is the difference between tribal employment preference and Indian employment preference?
- 170.915 May tribal employment taxes or fees be included in an IRR project budget?
- 170.916 May tribes impose taxes or fees on those performing IRR Program services?170.917 Can tribes receive direct payment of tribal employment taxes or fees?

#### EMERGENCY RELIEF

- 170.920 What is the purpose of the provisions relating to emergency relief?
- 170.921 What emergency or disaster assistance programs are available?
- 170.922 How can States get Emergency Relief Program funds to repair IRR System damage?
- 170.923 What qualifies for ERFO funding?
- 170.924 What happens if DOT denies an ERFO claim?
- 170.925 Is ERFO funding supplemental to IRR Program funding?
- 170.926 Can a tribe administer approved ERFO repairs under a self-determination contract or a self-governance agreement?
- 170.927 How can FEMA Program funds be used to repair damage?

TRIBAL TRANSPORTATION DEPARTMENTS

- 170.930 What is a tribal transportation department?
- 170.931 Can tribes use IRR Program funds to pay tribal transportation department operating costs?
- 170.932 Are there other funding sources for tribal transportation departments?
- 170.933 Can tribes regulate oversize or overweight vehicles?

#### RESOLVING DISPUTES

- 170.934 Are alternative dispute resolution procedures available?
- 170.935 How does a direct service tribe begin the alternative dispute resolution process?

#### OTHER MISCELLANEOUS PROVISIONS

- 170.941 May tribes become involved in transportation research?
- 170.942 Can a tribe use Federal funds for transportation services for a tribe's Welfare-to-Work, Temporary Assistance to Needy Families, and other quality-of-life improvement programs?

AUTHORITY: Pub. L. 105–178, 112 Stat. 107; 5 U.S.C. 565; 23 U.S.C. 101(a), 202, 204, 308; 25 U.S.C. 47, 25 U.S.C. 450.

SOURCE: 69 FR 43102, July 19, 2004, unless otherwise noted.

# Subpart A—Policies, Applicability, and Definitions

#### § 170.1 What does this part do?

This part provides rules and a funding formula for the Department of the Interior (DOI) in implementing the Indian Reservation Roads (IRR) Program. Included in this part are other Title 23 programs administered by the Secretary and implemented by tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act of 1975, as amended (ISDEAA).

# § 170.2 What is the IRR Program and BIA Road Maintenance Program policy?

- (a) It is the policy of the Secretary of the Interior and the Secretary of Transportation (Secretaries) to do the following in relation to the IRR and BIA Road Maintenance Programs:
- (1) Provide a uniform and consistent set of rules:
- (2) Foster knowledge of the programs by providing information about them and the opportunities that they create;